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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 195

INTERNATIONAL LONGSHOREMEN'S AND WARE-
MEN'S UNION, LOCAL 37, A VOLUNTARY ASSOCIATION;
CHRIST MENSALVAS, ERMESTO MANGAOANG,
PEDRO BONILLA, ELMFR LITTLE, AND SILVINO
TALLIDO,

Appellants,

vs.

JOHN P. BOYD, DISTRICT DIRECTOR, IMMIGRATION AND
NATURALIZATION SERVICE

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, petitioners-appellants submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the three-judge district court entered in this cause.

Opinion Below

The opinion of the district court for the Western District of Washington, Northern Division, is reported in 111 F. Supp. (Adv. Op.) 802; a copy of the opinion is attached hereto as Appendix A.

Jurisdiction

The opinion of the district court was filed on April 10, 1953. Motion for Rehearing was timely filed on April 20, 1953. The court's order denying the motion for rehearing was entered on April 22, 1952. A petition for appeal is presented to the district court herewith, to-wit, on June 22nd, 1953. The jurisdiction of the Supreme Court to review this cause by direct appeal is conferred by Title 28, United States Code, §§ 1253 and 2101(b).

The following cases sustain the jurisdiction of the Supreme Court to review the decision of a three-judge district court denying an injunction against the enforcement of a federal statute: *Stafford v. Wallace* (1922), 258 U. S. 495; *Radio Corp. of America v. United States* (1951), 341 U. S. 412. Direct review lies when the injunction is sought only against one particular application of a statute; *Fleming v. Rhodes* (1947), 331 U. S. 100 (involving a state statute).

Questions Presented

The basic issues presented by this appeal are whether Congress intended, and, if so, whether constitutional sanction exists to exclude non-citizens who seek to enter the continental United States under the following circumstances: Non-citizens, lawfully admitted to the continental United States for permanent residence, returning from temporary residence in Alaska, in pursuance of their seasonal employment contracts.

These issues are presented by the five assignments of error by the appellants, in which it is urged that the district court erred, as follows:

1. In holding that paragraph (7) of § 212(d) of the Immigration and Nationality Act of 1952 applies to lawful permanent residents of the continental United States who travel to Alaska from Seattle and who seek

to return therefrom to the continental United States at Seattle.

2. In holding that Congress has the power to classify Alaska as a foreign territory for the purpose of exclusion.

3. In holding that aliens who are lawful permanent residents of the United States may be constitutionally excluded pursuant to the provisions of paragraph (7) of § 212(d) of the Immigration and Nationality Act of 1952.

4. In denying petitioners an injunction restraining the respondent, John P. Boyd, District Director, Immigration and Naturalization Service, from enforcing the provisions of paragraph (7) of § 212(d) of the Immigration and Nationality Act of 1952 as applicable to petitioners, and those they represent.

5. In denying petitioners' motion for rehearing and reconsideration of its denial to grant the above-mentioned injunction.

Statute Involved

The statute involved in this appeal is paragraph (7) of § 212(d) of the Immigration and Nationality Act of 1952, 66 Stat. 182, Title 8, USCA (1952 Supp.) § 1182(d)(7). The paragraph provides as follows:

"(7) The provisions of subsection (a) of this section, except paragraphs (20), (21), and (26), of said subsection shall be applicable to any alien who shall leave Hawaii, Alaska, Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States: *Provided*, That persons who were admitted to Hawaii under the last sentence of § 8(a)(1) of the Act of March 24, 1934, as amended (48 Stat. 456), and aliens who were admitted to Hawaii as nationals of the United States shall not be excepted by this paragraph from the application of paragraphs (20) and (21) of subsection (a) of this section, unless they belong to a class de-

clared to be nonquota immigrants under the provisions of § 1101(a)(27) of this title, other than subparagraph (e) thereof, or unless they were admitted to Hawaii with an immigration visa. The Attorney General shall by regulations provide a method and procedure for the temporary admission to the United States of the aliens described in this proviso. Any alien described in this paragraph, who is excluded from admission to the United States, shall be immediately deported in the manner provided by § 1227(a) of this title."

Statement

Petitioners-appellants are non-citizens who have been lawfully admitted for permanent residence to the continental United States, and who are members of the International Longshoremen's and Warehousemen's Union, Local 37, a voluntary association which bargains collectively for jobs and job opportunities in the Alaska herring and salmon canning industries. The said Union consists of a membership of over 3,000 persons, the overwhelming majority of whom are non-citizens, and who are engaged in seasonal agricultural work in the west coast states, during the fall and winter months, and who then travel to Alaska during the summer months to man the herring and salmon canneries. This employment in Alaska is a substantial and essential portion of each individual petitioner's yearly income.

The respondent-appellee, John P. Boyd, District Director Immigration and Naturalization Service, for District 11 (comprising Washington, Oregon, and Alaska), announced that the above specified provision of paragraph (7) of § 212(d) of the Immigration and Nationality Act of 1952 would apply to all non-citizens who leave the continental United States to work in Alaska and then immediately return to the continental United States; that is, they would

be subject to the exclusion provisions of the 1952 Act, although in fact, none would ever leave the territory of the United States except in transit on United States transport facilities.

The petitioners-appellants sought an injunction against the enforcement of the above specified provisions on the ground that such application would be, and is, unconstitutional, and, further, that Congress did not intend such application.

The original petition and return, and the amendments to the petition and return were superseded by the court's pre-trial order encompassing the agreed facts and issues of law. No testimony was taken at the trial. Respondent's Exhibit A and petitioners' Exhibits B through C documented by the pre-trial order by showing that respondent-appellant intended to apply the provisions of paragraph (7) of § 212(d) of the 1952 Act to the petitioners-appellants upon their return from Alaska; petitioners' Exhibit A documented the pre-trial order by showing that the petitioners-appellants enjoyed various contract and property rights which would be jeopardized and denied them if they were not able to return from Alaska. Since these exhibits do no more than document the agreed facts set forth in the pre-trial order, they are not designated as part of the record on appeal.

The case was argued orally before the three-judge district court on April 6, 1953, and the court filed its opinion on April 10, 1953, holding that Congress did intend the exclusion provisions of the Act to be applied to petitioners-appellants and that such application was not unconstitutional. A motion for rehearing was timely filed on April 20, 1953; said motion for rehearing was denied by the court's order, dated April 21, and entered the following day, April 22, 1953.

The Questions Are Substantial

1. Congress Cannot Constitutionally Provide For Exclusion of Lawful Permanent Residents Who Leave The Continental United States, Travel to Other Territory of the United States and Seek to Return to the United States

The constitutional issues presented by the within cause are closely analogous to those which the Supreme Court recently expressly left undecided in the case of *Kwong Hai Chew v. Colding* (1953), 344 U. S. 590. In the *Chew* case the court indicated that the secrecy-security exclusion hearings (now provided for in § 235 of the 1952 Act) were not intended to apply, and could not constitutionally be applied, to the petitioner who was an alien seaman returning from a foreign voyage to his home port in New York, where he had previously enjoyed the status of a permanent resident of the United States. The Supreme Court said, at 600:

“We do not regard the constitutional status which petitioner indisputably enjoyed prior to his voyage as terminated by that voyage. From a constitutional point of view, he is entitled to due process without regard to whether or not, for immigration purposes, he is to be treated as an entrant alien, and we do not now reach the question whether he is to be so treated.”

The court further said, at 601:

“While it may be that a resident alien’s ultimate right to remain in the United States is subject to alteration by statute or authorized regulation because of a voyage undertaken by him to foreign ports, it does not follow that he is thereby deprived of his constitutional right to procedural due process.”

The facts presented in this case are even stronger than those presented in the *Chew* case, for the petitioners-appel-

lants herein are permanent residents who seek to return to the mainland from a territory of the United States, rather than permanent residents who seek to return to the United States after trips to foreign countries.

The district court stated:

"We are not dealing here with due process of law, but rather with the power of Congress to fix or circumscribe the status of certain aliens who leave a territory of the United States to enter continental United States or other places under the jurisdiction of the United States."

This argument completely ignores the fact that the petitioners-appellants are lawful permanent residents who are being threatened with *exclusion* although they will never have left the United States. They are entitled to the protection of due process of law as permanent residents: *Bridges v. Wixon* (1945) 326 US 135; *Kwong Hai Chew v. Colding* (1953) 344 US 590.

Petitioners-appellants are not contending that they cannot be expelled, which was erroneously implied by the district court in its opinion. They are insisting, however, that before they may be deprived of their status as permanent residents they must be expelled, pursuant to the expulsion process, and not the perfunctory hearing (and incarceration which they will necessarily suffer) if they are excluded upon their return from Alaska. Being lawful permanent residents who never leave the United States, there is no rational basis upon which Congress can justify providing for their exclusion.

The district court reached its decision without discussing, or even citing, the decision of the Supreme Court in *Kwong Hai Chew v. Colding*, supra, although in that case the Supreme Court based its decision on the precise fact that as a lawful permanent resident certain exclusion processes

could not be applied to the petitioner Chew. The Court also indicated that it was doubtful whether he could be excluded at all. Despite this decision, however, the district court in its opinion states:

"The exclusion procedure outlined in Sections 235 and 236 of the Act would be applicable to such aliens."

Yet § 235 includes the very proceedings that the Supreme Court held could not be applied in the *Chew* case.

Petitioners-appellants respectfully urge that the district court has erroneously misinterpreted and misapprehended (or ignored) the import of the *Chew* case.

The importance of this issue is patent, for the volume of travel of lawful permanent residents to and from the territories and insular possessions of the United States is a substantial proportion of the total travel between said territories and the United States. The effect is particularly important as regards travel to and from Alaska, since a substantial proportion of the men and women who work in the seasonal fishing industries in the territory and waters of Alaska are persons of foreign birth. These persons, including petitioners-appellants herein, are placed in the position of deciding to continue to exercise their employment rights in Alaska and thereby be subjecting themselves to exclusion and all of the corollary sanctions involved in such a proceeding [See *U.S. ex rel Knauff v. Shaughnessy* (1950) 338 US 537], or forego and abandon all of their seniority and job rights in Alaska.

2. Congress Did Not Intend To Provide For The Exclusion of Lawful Permanent Residents of the United States Who Travel to and Seek to Return From the Territories of the United States.

A second and subsidiary issue raised by petitioners-appellants below is that Congress did not intend the Act

to apply to persons in their position, but merely intended to extend the prior practice which governed aliens seeking to enter the continental United States for the first time. This question is also a substantial one.

The court below wholly misapprehended congressional intent when it interpreted paragraph (7) of subsection 212(d) of the Immigration and Nationality Act of 1952 as applying to petitioners-appellants.

Petitioners-appellants are all aliens who were lawfully admitted for permanent residence on the mainland. This admission was without qualification; they are, therefore, not now immigrants. Exclusion, however, applies only to immigrants: see *Lapina v. Williams* (1914) 232 US 78. Congress recognized this in its House Report #1365 (accompanying the House Version of the 1952 Act) at pages 36 to 37:

“Aliens who meet the qualitative tests and are eligible for admission into the United States are classified under existing law as either immigrants or non-immigrants. The immigrant class includes those aliens who seek to enter the United States for permanent residence . . .” (Emphasis supplied)

Since all of the petitioners-appellants have, previously to the passage of the Act, been lawfully admitted for permanent residence, they are not immigrants within the meaning of § 212(d)(7) of the 1952 Act.

Congress also stated in House Report #1365, at page 53, and Senate Report #1072, at page 14, that:

“Section 212(d)(7) of the bill continues in effect special procedures applicable to aliens who travel from the Panama Canal Zone, territories, or outlying possessions to the continental United States or any other territory under the jurisdiction of the United States. Under the bill, such procedures will also be applicable

to aliens traveling from Alaska to the continental United States."

The prior practice referred to by Congress was founded upon the distinction between an unqualified admission to the territories: *Healy v. Backus* (CA 9, 1915), 221 F. 358, *In re Singh* (MD Cal., 1913) 209 F. 700. These cases held that the alien who is admitted to the insular territories could be excluded upon seeking to enter the continental United States for the first time, precisely because his original entry to the islands was *qualified* and made subject to further exclusion before an unqualified admission for permanent residence in the continental United States could be effected.

Since petitioners-appellants have obtained a lawful, unqualified admission into continental United States for permanent residence, the Act does not apply to them.

The words "any alien" in paragraph (7) are followed by the words "who shall leave Alaska . . . and who seek to enter." This modification clearly indicates a change of status from one who is resident in Alaska to one who is seeking permanent residence in the continental United States. Thus, when the court below stated: "The words 'any alien' include aliens situated as those here involved" it failed to read those words in their proper historical and textual context.

It is respectfully submitted that the decision of the three-judge district court fails to recognize and protect the status which the petitioners-appellants enjoy as lawful permanent residents, and that it erred in holding that Congress intended and can constitutionally provide that they may be excluded from the continental United States although they have never left the United States since their original admission to the continental United States for permanent residence.

We believe that the questions presented by this appeal are substantial, and that they present issues of great public importance.

Respectfully submitted,

NORMAN LEONARD,
Counsel for Appellants.

JOHN CAUGHLAN,
SIGFRIED HESSE,
of Counsel.

APPENDIX A

PER CURIAM OPINION OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN
DIVISION

No. 3384

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 37, a Voluntary Association, CHRIST MEN-SALVAS, ERNESTO MANGAOANG, PEDRO BONILLA, ELMER LITTLE, and SILVINO TALLIDO, *Petitioners*,

vs.

JOHN P. BOYD, District Director, Immigration and Naturalization Service, *Respondent*

Per CURIAM:

This matter is now before us sitting as a statutory three-judge United States District Court convened pursuant to the provisions of Section 2284, Title 28 U. S. C.

Petitioners seek an injunction against respondent's interpretation and enforcement of Section 212(d)(7) of the Immigration and Nationality Act of 1952 and a declaration of rights thereunder.

Jurisdiction of the controversy is asserted under Title 28 U. S. C., Section 1337, 2201 and 2282.

Under provision of a pretrial order and an amendment thereto entered prior to the hearing of the case all material factual issues were agreed upon and the pleadings passed out of the case.

At the hearing the parties offered no evidence apart from the exhibits identified in and attached to the pretrial order and agreed that the case as submitted presents only issues of law as set forth in the pretrial order.

The parties have agreed in the pretrial order and amendment thereto that the facts, so far as pertinent to the disposition of this case, are set forth in paragraphs II through IX of the "Admitted Facts" as follows:

"II

"The International Longshoremen's and Warehousemen's Union, Local 37, is a voluntary association of over

three thousand persons who work every summer in the herring and salmon canneries of Alaska.

"III

"Petitioners Mensalvas and Mangaong are the president and business agent of said union, respectively, and they, with the union, bring this action on behalf of all members of the union who are aliens and who are lawful permanent residents of the United States.

"IV

"Respondent is the District Director of the Immigration and Naturalization Service, Seattle, Washington, who is charged with the duty of enforcing all laws and regulations regarding immigration into the port of Seattle.

"V

"For many years there has been collective bargaining in the salmon and herring canning industry in Alaska and said union has been for many years a principal bargaining agent in said industries, these collective bargaining agreements governing the terms and conditions of employment and seniority of employment in the various salmon and herring canneries in Alaska.

"VI

"The members of said union collectively own its buildings, equipment and contract rights and enjoy further, because of their membership in said union, numerous other rights such as pensions and insurance.

"VII

"If the members of said union who are lawful permanent resident aliens are excluded upon their return to Seattle from Alaska after the 1953 cannning season the above specified contract and property rights will be jeopardized and forfeited. The most recent collective bargaining contract of the union is attached to this order as Petitioners' Exhibit A.

"VIII

"The respondent has concluded that all members of said union who are lawful permanent residents of the United States and who go to Alaska from Seattle and return to the continental United States at Seattle will be subject to the provisions of section 212(a) of the Immigration and Nationality Act of 1952 as required by the language of section 212(d)(7) of said Act and pertinent regulations as interpreted by the respondent, John P. Boyd, who, as an enforcement officer, charged with the enforcement of the immigration laws and regulations, would act substantially in the following manner with respect to the enforcement of such laws and regulations:

"Upon the return of a lawful resident alien the respondent would direct Immigration officers to inspect such alien pursuant to the provisions of section 235 of the Act to determine whether said alien belongs to any of the classes enumerated in section 212(a) of said Act. If the examining officer determined that he did not come within the provisions of a class enumerated in section 212 of the Act, the lawful resident alien would be admitted but if, as provided by section 235(b), such alien did not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land, the said alien would be detained for further inquiry to be conducted by a Special Inquiry Officer. The Special Inquiry officer would then proceed in the manner provided by section 235(a), the alien having the right of counsel provided by section 292 of the Act, to determine whether such alien be allowed to enter or should be excluded and deported. If the decision of the Special Inquiry Officer is adverse, the alien would have the right of appeal to the Attorney General provided by section 236(b) of the Act. The Attorney General may in his discretion, as provided by section 212(e) of the Act, admit aliens lawfully admitted for permanent residence who temporarily proceed abroad and who are returning to a lawful, unrelinquished domicile of seven consecutive years without regard to the provisions of paragraphs 1 through 25 and paragraphs 30 and 31 of section 212(a). The decision of the Special Inquiry Officer would be final unless reversed

on appeal to the Attorney General. The alien would have the further right of collateral review by habeas corpus proceedings of the Attorney General's decision to determine whether or not the law had been correctly applied and he had been given a fair hearing consistent with the requirements of procedural due process.

"IX

"That Christ Mensalvas, Ernesto Mangaoang, Ponciano Torres, Ramon Tancioco, and Pedro Caborney are all members of the Union who were lawfully admitted to the United States as permanent residents; that respondent is presently seeking, by deportation proceedings to expel them; that an order or warrant of deportation has been issued in their cases; that administrative appeal and/or judicial review is presently being sought by them; that they all intend to travel to Alaska this summer in pursuance of their employment rights; and that this employment, pursuant to the contract rights specified above, constitutes the source of a substantial portion of their yearly income."

The issues of law as posed in the pretrial order are:

"I

"Does the Court have jurisdiction, in that, is there a present threat by the respondent, other than hypothetical, beyond that implied by the existence of the pertinent laws and regulations to a vested right or status of the petitioners which is entitled to protection against a cause of exclusion proscribed (prescribed) by Congress?

"II

"Whether paragraph (7) of section 212(d) of the Act applies to lawful permanent residents of the continental United States who travel to Alaska from Seattle and who seek to return therefrom to the continental United States at Seattle; or whether said section applies only to aliens not lawfully admitted to the United States seeking to enter the continental United States at Seattle from Alaska for the first time?

“III

“If the first interpretation is adopted, whether

(a) Congress has the power to classify Alaska as a foreign territory for the purpose of exclusion?

(b) Whether aliens who are lawful permanent residents of the United States may constitutionally be excluded pursuant to said section?”

It is clear that the issues of law here involved concern only aliens and not citizens of the United States by birth or naturalization.

Proceeding to the first issue of law, respondent contends that the court is without jurisdiction under Article III. Section 2 of the United States Constitution in that the case does not present a justiciable controversy. We do not agree. Borrowing the language of Circuit Judge Clark of the Second Circuit, there can be little question that a suit will lie against a defendant, or respondent such as here, for acting beyond his statutory authority; and the declaratory judgment, together with an enforcing injunction, furnishes a proper device to test the scope of this authority. See *U. S. Lines Co. v. Shaughnessy*, 195 F. 2d 385; *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U. S. 123, 139-140, 71 S. Ct. 624, 95 L. Ed. 817 (and cases therein cited).

As to the second question, we think section 212(d)(7) of the Immigration and Nationality Act of 1952 does apply to lawfully admitted aliens who are permanent residents of the continental United States when returning from Alaska to continental United States at Seattle.

Section 212(a) of the Immigration and Nationality Act of 1952 in its opening paragraph provides:

“Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:”

Without question this language, when read with other provisions of the Act, must be interpreted to authorize respondent to exclude aliens such as petitioners if within any

of the classes thereafter referred to, in the event such aliens departed from the United States for a foreign land and sought return. The exclusion procedure outlined in Sections 235 and 236 of the Act would be applicable to such aliens. *Shaughnessy v. Mezci*, decided by the United States Supreme Court March 16, 1953.

The language of Section 212(d)(7) in plain and simple words makes Section 212(a) applicable "to *any alien* who shall leave Hawaii, Alaska, Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States." We cannot escape the obvious meaning of the language used. The words "any alien" included aliens situated as are those here involved. As stated by Judge Sugarman in *United States Lines Co. v. Shaughnessy*, 101 F. Supp. 61, at page 64 (affirmed 195 F. 2d 385):

"In arriving at the intent of Congress, the courts are not to speculate as to the possible thoughts which might have been in the minds of the legislators when the statute was enacted. It is not for the court, acting upon conjecture and surmising what may have been the intent of the Congress, to interpolate exceptions in the statute, thus in effect avoiding and nullifying the express declaration of the act. On the contrary, the legislative intent is to be determined primarily from the language used in the act, read in connection with the canons of interpretation and surrounding circumstances. The language is generally construed according to its natural and most obvious sense, without resorting to an artificial or forced construction. Words of ordinary import receive their understood meaning, and technical terms are construed in their special sense. While the literal meaning of the statute may be avoided to effectuate the legislative intent, Congress is presumed to mean what it says, and if there is no ambiguity in the act, it is generally construed according to its plain terms."

The third and final dual question to decide, while posed in two parts, is actually one, namely, has Congress exceeded

its constitutional powers in enacting Section 212(d)(7) as this court has now interpreted said section. We think not. We are not dealing here with the question of due process of law but rather with the power of Congress to fix or circumscribe the status of certain aliens who leave a territory of the United States to enter continental United States.

The Supreme Court, in considering the rights of lawfully admitted aliens who were permanent residents of the continental United States, stated in *Harrisades v. Shaughnessy*, 342 U. S. 580, page 586:

"Under our law, the alien in several respects stands on an equal footing with citizens, but in others has never been conceded legal parity with the citizen. Most importantly, to protract this ambiguous status within the country is not his right but is a matter of permission and tolerance. The Government's power to terminate its hospitality has been asserted and sustained by this Court since the question first arose."

The fact that an alien leaving a territory of the United States and seeking entry to continental United States may have been recently and for a long period of time theretofore been a lawfully admitted alien permanently residing in continental United States would not alter or restrict the power of the government to circumscribe his status as an alien.

Congress having the authority to legislate generally on the subject matter before us, in what respect, if any, has that authority here been violated? Congressional wisdom or purpose, as such, is not reviewable by the courts and has no place in the legal issue here involved. Keeping clearly in mind the vast and broad powers of Congress to enact legislation excluding or expelling aliens as balanced against the limited constitutional rights of all aliens, including lawfully admitted resident aliens of continental United States, we cannot hold that that portion of the statute under attack offends or is beyond the constitutional authority vested in Congress even though its provisions make applicable restrictions upon aliens leaving the territories of the United States, including Alaska, and entering or reentering other territories, states or places under United States juris-

diction when not applicable to aliens permanently resident in or traveling within or between the states. Neither are we aware of any constitutional limitation upon the power of Congress which would forbid its classification in the same category, for the purpose of exclusion, lawfully admitted aliens permanently residing in continental United States when seeking reentry into the states from a territory of the United States, and similarly situated aliens seeking reentry to the United States from a foreign land.

The relief sought by petitioners herein is denied and the action is hereby dismissed.

Dated April 10, 1953.

Homer T. Bone, United States Circuit Judge. John C. Bowen, United States District Judge. William J. Lindberg, United States District Judge.

(9362)